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thereof, it will not be disturbed by the appellate court on writ of error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620 et seq.]

Error to Circuit Court, Charles City County.

Ejectment by P. J. Reynolds against George W. Wallace and others. There was a judgment for defendants, and plaintiff brings error. Affirmed.

*Henley, Hall, Hall & Peachy*, of Williamsburg, for plaintiff in error.

*Nance & Nance*, of Winston-Salem, N. C., for defendants in error.

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### SCRUGGS *v.* COMMONWEALTH.

June 12, 1919.

[99 S. E. 518.]

1. **Homicide (§ 254\*)—Uxoricide—Evidence.**—On trial for murder of accused's wife, where the defense was suicide, evidence held insufficient to support conviction of murder in the second degree.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 120.]

2. **Criminal Law (§ 561 (2)\*)—Proof beyond Reasonable Doubt.**—In a murder trial, the burden rests upon the commonwealth to establish guilt beyond a reasonable doubt, either by direct or circumstantial evidence.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 75.]

3. **Criminal Law (§§ 419, 420 (11)\*)—Hearsay Evidence.**—In a trial for murder of accused's wife, the only motive suggested being that accused owed deceased money, evidence of statement in conversation of deceased with a witness, not in the presence of accused, that accused "owed her some money and had to pay it back to her, and that when she was \* \* \* on a visit" accused "wrote her that some one had broken in \* \* \* and stolen his money," was inadmissible under the hearsay rule.

4. **Criminal Law (§§ 419, 420 (1)\*)—Hearsay Evidence—Motive.**—Motive can no more be proved by hearsay evidence than any other fact.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 49.]

Error to Circuit Court, Campbell County.

Thomas S. Scruggs was convicted of murder in the second

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

degree, and brings error. Judgment reversed, verdict set aside, and case remanded.

*W. M. Murrell* and *Duncan Drysdale*, both of Lynchburg, for plaintiff in error.

*Jno. R. Saunders, Atty. Gen.*, and *A. H. Light*, of Rustburg, for the Commonwealth.

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HUGO et al. v. CLARK.

June 12, 1919.

[99 S. E. 521.]

**Witnesses (§ 199 (4)\*)—Privileged Communications—Attorney and Client—Death of Client.**—To show revocation of a will, in a contest between heirs of deceased, claiming he died intestate, and one claiming under that will, one who as attorney drew a later will may testify, not only as to its execution, but as to its contents, as expressly revoking the first, especially where he was a subscribing witness thereto, as against objections of confidential communications; the rule of privilege not obtaining in such circumstances.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 144.]

Appeal from Circuit Court of City of Norfolk.

The will of Cyrus Warden, deceased, in favor of Eva Catherine Clark, was contested by Randolph B. Hugo and others. From an adverse judgment, they appeal. Reversed and remanded.

*J. G. Martin*, *Harry E. McCoy*, and *W. S. Morris, Jr.*, all of Norfolk, for appellants.

*Thomas H. Willcox* and *A. Johnston Ackiss*, both of Norfolk, for appellee.

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SMALL v. VIRGINIA RY. & POWER CO.

June 12, 1919.

[99 S. E. 525.]

**1. Street Railroads (§§ 98 (5), 102 (2)\*)—Injuries on Track—Contributory Negligence and Proximate Cause—Questions for Jury.**—In an action for injuries to a bicycle rider who fell into an excavation between street railway tracks and was struck by a street car while attempting to arise, questions whether he was guilty of negligence,

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.